

**CITY OF BEAUMONT  
POLICIES AND PROCEDURES MANUAL**

Policy Number: 7.15

Subject: Federal Transit Administration (FTA) Purchasing Guidelines

Effective Date: \_\_\_\_\_

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City Manager / Date

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12-4-18

I. PURPOSE

- A. The guidelines provided below are to be followed in addition to the City of Beaumont, City Policy, Purchasing Procedures 7.3. When there is a difference in guideline between the FTA and City, the stricter guideline shall be followed.

II. DEFINITIONS

- A. Micro Purchase – Purchases where the aggregate dollar amount does not exceed \$3,000 (or \$2,000 if the procurement is construction and subject to Davis-Bacon). When practical, the City should distribute micro purchases equitably among qualified suppliers. No competitive quotes are required if management determines that the price is reasonable.
- B. Small Purchase – Includes purchases up to the Simplified Acquisition threshold, which is currently \$150,000. Informal purchasing procedures are acceptable. However, City policy requires that formal bid process is to be followed for purchases \$50,000 and above.
- C. Sealed Bids – Used for purchases over \$50,000. Under this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price.
- D. Competitive Proposals – This procurement method requires formal solicitation, fixed price or cost reimbursement contracts and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the City, with price being one of the various factors.
- E. Non Competitive Proposals – Also known as sole source procurement, this may be appropriate only when specific criteria are met. Examples include

when an item is available only from one source, when a public emergency does not allow for the time of the competitive proposal process, when the federal awarding agency authorizes, or after a number of attempts at a competitive process, the competition is deemed inadequate.

### III. RESPONSIBILITIES

#### A. Disadvantaged Business Enterprise Program

The Federal Transit Administration (FTA) requires that recipients of FTA grant assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBE's) are afforded the maximum opportunity to participate in the performance of contracts which are financed in whole or in part with federal funds. As evidence of compliance, the Beaumont Transit must set goals for DBE participation in such contracts which are expected to be awarded during the following fiscal year and describe efforts from the previous fiscal year. Beaumont Transit's DBE goals must be filed every three years with FTA by August 1st.

For the purpose of this program, a DBE is defined as: a small business concern which is both owned and controlled by socially and economically disadvantaged persons. This means that disadvantaged individuals must own at least 51% of the business and they must control the management and daily operations of the business. Included in the classification of disadvantaged individuals are United States citizens who are: African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or members of other groups or individuals who the Small Business Administration (SBA) has determined are economically and socially disadvantaged under Section 8(a) of the Small Business Act.

#### B. System for Ensuring the Most Efficient and Economic Purchase

*Reference FTA C 4220.1F, Ch.III, 1b,c,e: Grantees are required to establish procedures to avoid the purchase of unnecessary property and services they do not need.*

The FTA requires that procedures are established to avoid the purchase of unnecessary property and services that are not needed. The procedures are intended to ensure that measures are implemented so that no duplicative or unnecessary purchases are made, including duplicative items and quantities or options whose use is unlikely. Additionally, the Purchasing Manager will determine whether to consolidate or break out procurements to obtain a more economical purchase. These processes are included as

part of the requisition approval process and the procurement approval process implemented with the City.

C. Written Record of Procurement History

*Reference FTA C 4220.1F, Ch.III, 3.d: Grantee's are required to maintain and make available records detailing the history of each procurement.*

The Purchasing Manager shall ensure that there is a written record of procurement history for all procurement actions, regardless of dollar value. *At a minimum*, records are to include the rationale for the method of procurement, the reason for the selection of the contract type, the reason for contractor selection or rejection, and the basis for the contract price.

D. Independent Cost Estimate

*Reference FTA C 4220.1F, Ch.VI, 6: In connection with every procurement action, grantees must make independent estimates before receiving bids or proposals.*

An independent estimate is required for all procurements over \$3,000 and for all contract change orders and amendments. Independent does not mean independent of the City, it means independent and prior to bids and proposals being received. The Purchasing Manager or designee must document the date and the source of the independent cost estimate (ICE) in each procurement file, but it is the responsibility of the Beaumont Transit to prepare the actual estimate. A budget number is not acceptable as an ICE. Additionally, the ICE is the foundation for the later price analysis that is completed by the procurement department.

E. Brand Name or Equal

*Reference FTA C 4220.1F, Ch.III, 3a: When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.*

Chapter VI, Section 2(a)(3) and (a)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics is considered to be restrictive of competition.

The City shall work with requestors to see if brand names can be removed from the specification by substituting design or performance specifications. Whenever brand names are used, the solicitation must include a phrase such as "or equal," "or approved equal," or "similar in design, construction and performance" with the brand name. Many standard equipment and construction documents also contain a clause in the general provisions that states that even if the phrase "or approved equal" is inadvertently omitted, it is implied after any brand name. If "or equal" is specified, the minimum essential characteristics and standards to which the material, product or service must conform if it is to satisfy its intended use must be included.

F. CODE OF CONDUCT

*Reference FTA C 4220.1F, Ch.III, 1: Requires each grantee to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.*

1. Purpose & Applicability

As a governmental institution the City must be vigilant in its protection of the public trust. Toward this end, employees, officers, and agents of the City must conduct themselves in a manner which will foster public confidence in the integrity of the City's procurement system.

This section is intended to prescribe standards of conduct designed to ensure honesty and integrity in the City's procurements. The standards established herein shall apply to all activities associated with the procurement of goods and services, and shall extend to all employees, officers, directors, and agents of the City.

2. Conflict of Interest

*Reference FTA C 4220.1F, Ch. VI, 2a: An organizational conflict of interest (OCI) is considered to be restrictive of competition.*

*Note: Ensure there is an OCI clause in the contract terms.*

No employee, officer, director, or agent of the City shall participate in the selection, award, or administration of a contract or purchase order if a conflict of interest, whether real or apparent, would be involved. Such conflict would arise when any of the following has a financial or other interest in the firm(s) considered or selected for award:

- a. A City employee, officer, director, or agent;
- b. Any member of his/her immediate family;
- c. His/her business associate; or
- d. An organization which employs or is about to employ any of the above.

Employees, officers, directors, and agents of the City shall be subject to the laws of the State of Texas concerning conflicts of interest for public officials. Anyone found to violate standards established by such laws may be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

In cases where an employee, officer, director, or agent of the City may have a conflict or potential conflict of interest, it is the policy of the City that such individual(s) must promptly report the conflict in writing to the Chief Financial Officer and communicated immediately to the City Manager. Failure to adhere to this requirement shall constitute a violation of the City policy and may subject the violator to disciplinary action.

Organizational conflicts of interest are considered to be restrictive and are therefore prohibited on all City procurements. An organizational conflict of interest exists when:

- a. A contractor is unable or potentially unable to provide impartial and objective assistance or advice due to other activities, relationships, contracts or circumstances.
- b. A contractor has an unfair competitive advantage through obtaining access to non-public information during the performance of an earlier contract.
- c. During the conduct of an earlier procurement, a contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

3. Gifts, Gratuities and Lobbying

Additionally, contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

G. GENERAL GUIDELINES

The method which is used to procure an item or a service depends on two factors: first, the item being procured; and second, the cost. The following define the procedures which must be followed for each type of procurement.

1. Supplies, Equipment and Materials

- a. Less than \$3,000 -  
Purchases less than \$3,000 are not subject to bidding requirements as long as whoever authorizes the purchase documents that the price to be fair and reasonable. Prices may be established through phone quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases.
- b. \$3,000 to \$50,000 -  
Procurements \$3,000 to \$50,000 require three written quotes from responsive and responsible suppliers. A deadline for bid submittal shall be established.
- c. Exceeds \$50,000 -  
Purchases of supplies, equipment and material exceeding \$50,000 require a formal competitive bidding process. Purchases of supplies, materials or equipment over \$50,000 require approval of the City Council prior to contract award.
- d. Natural Gas and Fuels -  
Natural gas purchases shall be procured from a public utility or supplier at the prevailing price. Likewise other fuels essential to transit operations are procured at local prevailing prices.

## 2. Construction Projects

### a. \$2,000 and Under -

Construction projects of \$2,000 or less are not subject to bidding requirements as long as whoever authorizes the project considers the price to be fair and reasonable. Prices may be established through phone quotes or other appropriate means. Such procurements are to be made in accordance with the procedures for informal purchase.

### b. \$2,000 to \$50,000 -

Construction projects in the range of \$2,000 to \$50,000 require written quotes from at least three vendors (if possible) and are to be made in accordance with the procedures for informal purchases. At the discretion of the Purchasing Manager, a deadline for bid submittal may be established. *Federal funded procurements must comply with the Davis-Bacon Act if \$2,000 or more.* Contracts over \$1,000 require prevailing wages to be paid.

### c. \$50,000 and Above -

Construction projects which exceed \$50,000 require a competitive bidding process. Construction projects over \$50,000 require approval by the City Council prior to contract award. Prevailing wages must be paid in contracts under this category.

## 3. Services

### a. Less than \$3,000 -

Procurements for services less than \$3,000 are not subject to bidding requirements as long as the person authorizing the purchase considers the price to be fair and reasonable. Prices may be established through phone quotes or other appropriate means. Such purchases are to be made in accordance with the procedures for informal purchases.

### b. \$3,000 to \$50,000 -

Procurements for services from \$3,000 to \$50,000 require written or oral quotes from a sufficient number of vendors to ensure a fair and reasonable price and are to be made in accordance with the procedures for informal purchases. At the discretion of the Purchasing Manager, a deadline for bid submittal may be established. A deadline for bid submittal shall be established.

- c. Exceeds \$50,000 -  
Contracts for service exceeding \$50,000 will be made in accordance with the procedures for formal purchases. Service contracts exceeding \$50,000 require approval by the City Council prior to contract award. Multiple years or optional year proposals will be valued in its entirety.

#### 4. Dividing Procurements Prohibited

The requirements outlined in this section apply to the total purchase amount of supplies, equipment, materials, construction or services. Related parts of a procurement are not to be divided for the express purpose of avoiding bidding requirements.

#### 5. Rolling Stock

The entire process for procuring rolling stock can be broken into 3 phases:

- a. Select the method of procurement,
- b. Manage the solicitation process, and
- c. Make award and take delivery.

There are 3 methods that can be used when buying rolling stock:

- a. Invitation for Bid (IFB),
- b. Request for Proposal (RFP), and
- c. Piggybacking.

#### Step 1: Selecting the Method of Procurement

- 1) The decision to piggyback or manage a new solicitation is made once funding has been received and the purchase request has been developed.

#### Step 2: Managing the Solicitation

##### Piggybacking:

- 1) Verify assignability clause, verify inclusion of FTA clauses and Buy America certifications (include Buy America waivers, if applicable), conduct price analysis, and determine any desired changes to the



specification and ensure they are in-scope changes.

2) IFB:

Contract must be awarded to the lowest price responsive/responsible bidder, bidders must have the opportunity to submit requests for approved equals (RFA) and RFA responses must be provided to all bidders, and Buy America pre-award review must be conducted for procurements above \$150,000 or a waiver must be obtained.

3) RFP:

Evaluation criteria must be developed and listed in order of importance, award is made to the highest rated (best value) offeror, and Buy America pre-award review must be conducted for procurements above \$100,000 or a waiver must be obtained.

Step 3: Making the Award and Taking the Delivery

- a) A Buy America post-award audit must be conducted for all procurements above \$150,000 during manufacturing.
- b) After the initial order quantity has been fulfilled, options may need to be released as needed.

6. Buy America

Pre-award and post-delivery audits must be conducted for all rolling stock procurements. Purchasing Manager must verify 60% domestic product, review and verify proposed final assembly, and contractor may request a buy America waiver. All information must be documented in the relevant procurement files.

a. Pre-Award requirements:

- 1) Review and verify 60% domestic content AND U.S. final assembly location, operations and total cost OR request and receive a Buy America waiver.
- 2) Check bid specification compliance with solicitation specifications AND complete a

manufacturer capability study.

b. Post-Award requirements:

- 1) Review and verify 60% domestic content AND U.S. final assembly location, operations and total cost OR request and receive Buy America waiver.
- 2) Complete resident inspector's report AND complete visual inspections and performance tests OR complete visual inspection and road tests for procurements of 10 or more buses.
- 3) Verified FMVSS (Federal Motor Vehicle Safety Standards) sticker affixed to each bus.

7. Reasonableness of Price (Price/Cost Analysis)

In the event a single bid is received, a price/cost analysis shall be used to determine the reasonableness of the bid price. Note that price/cost analysis has to be done regardless of how many bids were received.

The Purchasing Manager or designee in charge of the solicitation may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, audit personnel may be requested to conduct a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

- a. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- b. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.

- c. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, together with discount or rebate arrangements.
- d. The comparison of proposed prices with estimates of cost independently developed by personnel within the City.
- e. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with the City as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

If only one bid is received for a contract that exceeds \$150,000, approval of FTA may be required (refer to *FTA Circular in effect*).

#### 8. Determining Reasonableness of Price: Cost Analysis

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal and is used where the City has less assurance of a fair and reasonable price. Cost plus percentage of cost and percentage of construction cost methods of contracting are prohibited.

Note that in conducting both a cost and price analysis, the comparison should be against the original Independent Cost Estimate that was prepared before the solicitation of bids.

The following procedure is to be followed:

- a. Verify contractor's cost data.
- b. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
  - 1) The necessity for certain costs;
  - 2) The reasonableness of amounts estimated for the necessary costs;
  - 3) Allowances for contingencies; and
  - 4) The basis used for allocations of particular overhead costs to the proposed contract.
- c. When the necessary data is available, compare the contractor's estimated cost with:
  - 1) Actual costs previously incurred by the contractor;
  - 2) The contractor's last prior cost estimate for the same or similar estimates;
  - 3) Current cost estimates from other possible sources; and
  - 4) Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d. Forecasting future trends in costs from historical experience:
  - 1) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
  - 2) In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- Is the cost allowable in accordance with Federal cost principles?

- Is the cost allocable to the particular project?
- Is the cost reasonable?

See the Appendix D and E of this policy for forms related to cost and price analysis.

#### 9. Basis of Award

*FTA C 4220.1F. Ch.VI.8b. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility is a procurement issue that is determined after receiving bids or proposals and before making contract award.*

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to the City, price and other factors considered.

Contracts shall be made only with responsible and responsive contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. As is the case with procurements made by competitive bid, consideration shall be given to such matters as contractor integrity and ethics, debarment and suspension, affirmative action and DBE, record of past performance, financial and technical capacity, or accessibility to other technical resources.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding by an IFB; independent cost estimate; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis. Additionally, the procurement records *must* include a screenshot or printout of the EPLS/SAM search conducted to ensure that the contractor selected is not on the debarment and suspension list, and that this is documented in the procurement file.

#### 10. Written Procurement Selection Procedures

*FTA C 4220.1F. Ch.3.d. A grantee must state its reasons for contractor selection.*

During the award process, the Purchasing Manager or designee must provide a written rationale for contractor selection. All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

11. Special Procedures for Architect/Engineering Services

*Geographic Preference: FTA C 4220.1F, Ch.VI,2a. For A&E procurements, geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.*

*Qualifications Exclude Price: FTA C 4220.1F, Ch.VI,3f. Qualifications-based competitive proposal procedures require that: an offeror's qualifications be evaluated for contract award and price be excluded as an evaluation factor.*

*Serial Price Negotiations: FTA C 4220.1F, Ch.VI,3f. Negotiations are conducted with only the most qualified offeror, failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. Show results of negotiation.*

Federal Circular in effect, requires that the City use competitive negotiation procedures for qualifications-based procurement of architectural and engineering ("A/E" hereafter) services and related services pertaining to a construction project such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, the City may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even through a firm that provides the above types of services are also potential sources to perform other services.

The steps to be used for proposal evaluation and contract negotiation for A/E contracts are as follows:

- a. Evaluation team is assigned by the Purchasing Manager or designee to review eligible firms and all responses to RFP.
- b. Team evaluates the firms based on the stated evaluation criteria published in the RFP such as:
  - 1) Professional qualifications for performance of the required services.
  - 2) Specialized experience and technical competence in the type work required.
  - 3) Capacity to accomplish the work in the required time.
  - 4) Past performance in terms of cost control, quality of work and compliance with performance schedules.
- c. Evaluation team holds discussions with the most highly qualified firms ("short list").
- d. Evaluation team prepares a report for the Purchasing Manager or designee recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Purchasing Manager or designee to review the basis upon which the recommendations were made. The Purchasing Manager or designee shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Purchasing Manager or designee shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
- e. If the final selection isn't final yet, it shall be made by the Purchasing Manager or designee from a list of the most highly qualified firms prepared by the evaluation team.
- f. After the final selection not final yet has taken place, the City may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, the City may release information

that negotiations will take place with the next highest rated firm.

- g. The final selection not final yet authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.
- h. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
- i. In determining the amount of compensation and the method of payment, consideration shall be given to:
  - 1) Scope and complexity of designs, surveys and other work and the skills necessary for these services.
  - 2) Quality and quantity of data provided to the A/E firm by the City.
  - 3) Location of, and conditions under which, the services will be performed.
  - 4) Date services to begin and time allowed for performance.
- j. Costs should be negotiated taking into consideration:
  - 1) Direct Labor.
  - 2) Overhead.
  - 3) General and administrative expenses.
  - 4) Materials.
  - 5) Other direct costs.
  - 6) Profit, which is further influenced by:
    - i. Degree of A/E firm's risk,
    - ii. Level of effort,



- iii. Level of talent or expertise the A/E firm must furnish,
  - iv. Amount of subcontracting,
  - v. Amount of top level A/E management involved,
  - vi. Subcontracts, and
  - vii. Contractors investment.
- k. When the contract is negotiated and signed, the negotiations are documented and placed in the file.
  - l. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
  - m. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to the City for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

## 12. Construction Bonding Requirements

*FTA C 4220.1F, Ch.VI, 2h.*

Bonds are required on all construction contracts. The following bonds are required for all construction contracts:

- a. Each bidder must provide a bid guarantee equivalent to 5% of its bid price.
- b. Third party contractors must obtain a performance bond for 100% of the contract price.
- c. Third party contractors must obtain a payment bond based on the following:
  - 1) Less than \$1,000,000:  
50% of the contract price if the contract price is not

more than \$1,000,000

- 2) More than \$1,000,000 but less than \$5,000,000:  
40% of the contract price if the contract price is  
more than \$1,000,000 but not more than  
\$5,000,000
- 3) More than \$5,000,000:  
\$2.5,000,000 if the contract price is more than  
\$5,000,000

Bond requirements are to meet these criteria or the City's requirements, which provide the City the best coverage.

#### H. NON-COMPETITIVE NEGOTIATIONS

##### 1. When to Use Non-Competitive Negotiation

*Chapter VI, Section 3(i)(1)(b) of FTA C 4220.1F allows for procurements by non-competitive proposal only when the contract award is inadequate under other procurement methods and at least one of the conditions outlined below exists:*

In case of great public calamity, such as extraordinary fire, flood, storm, epidemic, or other disaster, the President of the United States, Governor of Texas, or City Mayor may, by proclamation declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice.

Additionally, federal regulations require that one or more of the following conditions be met:

- a. There is a public exigency or emergency that does not allow time for competitive negotiation.
- b. The FTA authorizes a non-competitive negotiation.
- c. The item(s) is available only from a single source, as a matter of fact and not as a matter of preference or convenience.

- d. After solicitation of a number of sources, competition is determined to be inadequate.
- e. The item to be procured is an associated capital maintenance item as defined in *49 U.S.C. Section 5307 (A)(1)* that is procured directly from the original manufacturer or supplier of the item to be replaced after written certification to FTA that:
  - 1. The manufacturer or supplier is the only source for the item, and
  - 2. The price of the item is no higher than the price paid by other similar customers.
- f. A contract amendment or change order is needed that is not within the scope of the original contract.

2. Procedures for Non-Competitive Negotiation

Non-competitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Previously described procedures for competitive bidding and competitive proposal describe the procedures to be used for non-competitive negotiations. Circumstances under which a contract may be awarded by non-competitive negotiation are limited.

3. Single Source Procurement

Upon receiving a single bid or proposal in response to a solicitation, the Purchasing Manager must determine if competition was adequate. This must be documented and include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

An analysis *must* be conducted and documented in the procurement file, including the solicitation information, the solicitation due date, the number of solicitations requested, the number of bids received, the reasons for the lack of competition based on communication with suppliers, the basis for contract award (if applicable), and the new solicitation release date, if applicable.

## I. OUT-OF-SCOPE CHANGES

*Reference FTA C 4220.1F CH.VI,3.i.*

When a contractor is required to make a change that is outside the original scope of the contract, it will be considered an out-of-scope change and the City must justify and treat as a sole source procurement. This can include additional work that was not envisioned by the parties at the outset of the contract. Any out-of-scope changes must be treated as sole source procurements and must be documented and justified in accordance with the City's sole source procurement policies and include the necessary documentation, including cost analysis. Any amount that is an out-of-scope change to an existing contract must be treated as sole source procurement. If the new procurement (contract addition) is under \$3,000, it may be treated as a Micro purchase, but in that case it will not be classified as an addition to the existing contract, it must be classified and treated as a while new procurement.

Sole source justification for out-of-scope changes requires the following documentation:

1. Proper review of competition.
2. Statement of work or specification.
3. Cost/Price Analysis and profit negotiation.
4. Justify why an amendment was the only course of action.
5. Written history of the change and procurement action.

## J. BID PROTEST PROCEDURES

*Reference FTA C 4220.1F, Ch.VII, 1: Grantee's are to have written protest procedures as part of their requirement to maintain or acquire adequate technical capacity. Grantees must notify the FTA when they receive a protest and keep the FTA informed about its status. When a grantee denies a bid protest, they are to inform the FTA.*

The City shall make every effort to award contracts in compliance with state, federal and local regulation. Bidders who feel that a contract has been, or may be, awarded improperly shall have the right to protest the specifications and/or contract award in compliance with applicable local, state and federal regulations.

### 1. Filing Protest

- a. Protests dealing with restrictive specifications or alleged improprieties in the solicitation must be filed no later than

eight (8) working days prior to bid opening or closing date for receipt of proposals. Any other protest must be filed no later than three (3) working days after award of contract.

- b. Protests shall be in writing and addressed to the Purchasing Manager.
- c. The protest shall contain a statement describing the reasons for the protest and any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit. The protest shall also indicate the ruling or relief desired from the City.

2. Confidentiality

Materials submitted by a protester will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

3. Withholding of Award

When a protest is filed before opening of bids, the bids will not be opened prior to resolution of the protest, and when the protest is filed before award, the award will not be made prior to resolution of the protest, unless the City determines that:

- a. Items to be procured are urgently needed, or delivery or performance will be unduly delayed by failure to make award promptly; or
- b. Failure to make award will cause undue harm to the City.

In the event an award is to be made while a protest is pending, the FTA shall be notified if federal funding is involved.

4. Processing the Protest

- a. The City shall respond to the contractor within five (5) working days of receiving the protest. A conference on the merits of the protest may be held with the protester.
- b. Any additional information required by the City from the protester shall be submitted as expeditiously as possible, but no later than three (3) days after the receipt of said request.

5. Notification

The City shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

6. Appeal

If a protester is not satisfied with the decision made by the City, and Federal funds are involved, the protester may file a protest with the FTA. Review by FTA will be limited to:

- a. Violation of Federal Law or regulations.
- b. Violation of the City's protest procedures described herein, or failure by the City to review a protest.

Protests must be filed with FTA (with a concurrent copy to the City) within five (5) days after the City renders a final decision, or five (5) days after the protester knows, or has reason to know, that the City failed to render a final decision. After five (5) days, the City will confirm with FTA that FTA has not received a protest on the contract in question.

The FTA Circular 4220. 1 in effect is available for review at the City offices. A copy may be obtained from FTA at the following address:

Federal Transit Administration  
Region IX  
201 Mission Street, Suite 2210  
San Francisco, CA 94105

The City shall not be responsible for any protests not filed in a timely manner with FTA.

K. Contract Provisions

*FTA C 4220.1F Ch.IV, 2.b. Grantees may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.*

The main purpose of a written contract is to capture all the essential information regarding an agreement between two parties so that both sides are clear about their roles and responsibilities. The contract should also describe procedures to be followed in case of a disagreement between the parties or in case one or other of them fails to perform as agreed.

The basic elements of a contract are as follows:

1. Scope of work/goods to be delivered.
2. Contract amount/method of payment.
3. Term of contract/schedule.
4. Provisions for amendment/termination.
5. Legal and administrative obligations.
6. Terms & Conditions.

The elements of the contract describing the service or goods to be delivered, the contract amount and schedule will normally be unique to the particular circumstances and can be tailored by the City to suit particular needs. The other elements of the contract may be governed by Federal, state or City regulations. For example, FTA grantees are regulated in the type of payments they can make since FTA does not allow grantees to make advance payments and requires them to follow specific standards in the use of progress payments (see *FTA Circular in effect*). Exceptions to making advance payments are permitted for sound business reasons, but the FTA must provide written concurrence before the advance payment is made. Additionally, adequate security must be obtained when using progress payments. Consult allowable advance payments in FTA Circular 4220.1D.

To find out which provisions should be included in the contract, refer to the applicable Federal, state and local legislation and policies. At the end of this section and in the appendices is a summary of the contract clauses required by FTA.

## APPENDIX A:

### APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

*(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)*

<b>Provision</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchases</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000



Provision	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All

<b>Provision</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management</b>	<b>Rolling Stock Purchases</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

## APPENDIX B: PIGGYBACKING CHECKLIST

<b>Grantee:</b>	<b>Contractor:</b>
<b>Reviewer:</b>	<b>PO Number:</b>
<b>Date Reviewed:</b>	<b>Description:</b>
<b>Observations:</b>	<b>Award Amount:</b>

  

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Comments
50	<b>Piggybacking</b>  (1) This contract contains: (a) Assignability provisions (b) Required Federal clauses (c) Minimum and maximum quantities (if IDIQ)  (2) The procurement file contains: (a) Price reasonableness determination If this is not a "Piggybacking" contract, check NA.	<b>FTA C 4220.1F, V, 7. a. (2)</b>				

## APPENDIX C: Documentation Requirements by Procurement Type

	Micropurchase	Small Purchase	IFB	RFP	Sole Source
<b>Standard Inclusions</b>					
Method of Procurement Decision Matrix		X	X	X	X
Fair and Reasonable Price Determination	X				
Independent Cost Estimate		X	X	X	X
Clear, Accurate, Complete Specifications (Copy of Solicitation) <sup>1</sup>		X	X	X	X
Price Quotations		X			
Cost/Price Analysis		X	X	X	X (Cost)
Written Selection Procedures (Included in Solicitation)			X	X	
Emails to Potential Vendors, Proof of Publication <sup>2</sup>			X	X	
Bid Opening Sheet/Record of Proposals Submitted			X	X	
Responsiveness Determination			X	X	
Bid/Proposal Rejection Explanation (if any)			X	X	
Responsibility Determination (Copy of EPLS search)			X	X	X
Bid Tabulation / Selection of Lowest Price (incl. options) <sup>3</sup>			X		
Evaluation Rating Sheets and Summary <sup>4</sup>				X	
Sole Source Justification					X
Sound and Complete Agreement (Signed Contract) <sup>5</sup>			X	X	X

	Micropurchase	Small Purchase	IFB	RFP	Sole Source
Clauses (In Solicitation and Contract)			X	X	X
Written Record of Procurement History		X (2 sections)	X	X	X
Awarded Supplier's Proposal		X	X	X	X

<sup>1</sup> no brand names, unless "equal" is specified

<sup>2</sup> must allow adequate response time

<sup>3</sup> must have received responses from at least two responsive and responsible vendors

<sup>4</sup> see 3

<sup>5</sup> must establish contract start and end dates; payment terms

	Micropurchase	Small Purchase	IFB	RFP	Sole Source
<b>Special Circumstances</b>					
Contract Mods (in scope) <sup>6</sup>			X	X	X
Progress Payments			X	X	X
Approval for Advance Payments From FTA	X	X	X	X	X
Documentation of Board Approval			X	X	X
Notice of Protests and Resolution		X	X	X	X
Notice of Contract Claims and Resolutions		X	X	X	X
Piggybacking <sup>7</sup>			X	X	X
Davis-Bacon (Construction)	X >\$2000	X	X	X	
Copies of Bonds (Construction)			X	X	X
Buy America (Bus and Rolling Stock)			X	X	X
Evidence of Negotiations with Highest Ranked Suppliers and Ranking Based on Technical Capability Only (A&E)				X	

<sup>6</sup> out-of-scope must re-compete

<sup>7</sup> include copy of original contract

**APPENDIX D:**

**SAMPLE POST-DELIVERY BUY AMERICA CERTIFICATION LETTER**

**POST-DELIVERY BUY AMERICA CERTIFICATION**

As required by 49 CFR part 663 – Subpart C, The City of Beaumont, Texas certifies that it is satisfied that the vehicles received, three (3) heavy duty transit buses from Creative Bus Sales, meet the requirements of 49 U.S.C. 5323(j) as amended. The recipient, City of Beaumont, Texas has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the vehicles, including a description of the activities that took place at the final assembly point and the cost of final assembly.

Date:

---

Signature:

---

Printed Name:

---

Title:

---

**APPENDIX E:**

**SAMPLE POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION LETTER**

**POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION**

As required by 49 CFR part 663 – Subpart D, The City of Beaumont, Texas certifies that it received, at the post delivery stage, a copy of Creative Bus Sales self-certification information stating that the vehicles, three (3) heavy duty transit buses, comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

Date:

---

Signature:

---

Printed Name:

---

Title:

---



**APPENDIX F:**

**SAMPLE POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION LETTER**

**POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by 40 CFR part 663 – Subpart C, after visually inspecting and road testing the contract vehicles, The City of Beaumont, Texas certifies that the vehicles, three (3) heavy duty transit buses from Creative Bus Sales meet the contract specifications.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Attachments Required for FTA Non-Construction Contracts**

☐ REQUIRED FORM

**EDGAR CERTIFICATIONS**

**ADDENDUM FOR CONTRACT FUNDED BY U.S. FEDERAL GRANT**

***(NON-CONSTRUCTION CONTRACTS)***

**(RETURN WITH YOUR PROPOSAL.)**

This EDGAR Certifications addendum ("Addendum") is made a part of a contract ("Contract") between the City of Beaumont, Texas and the vendor ("Vendor"), where such contract and Vendor are referenced on the last page of this Addendum. The following certifications and provisions are required and apply when the City of Beaumont, Texas expends federal funds for any contract resulting from this procurement process. **Accordingly, the parties agree that the following terms and conditions are incorporated and made a part of the Contract in all situations where Vendor has been paid or will be paid with federal funds. Where there is a conflict between the terms of this Addendum and the terms of the underlying Contract, the terms of this Addendum shall prevail.**

**I. REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

**APPENDIX II TO 2 CFR PART 200**

**(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when the City of Beaumont, Texas expends federal funds, the City of Beaumont, Texas reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(B) Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

- 1. Termination for Cause:** Pursuant to Federal Rule (B) above, when the City of Beaumont, Texas expends federal funds, the City of Beaumont, Texas reserves the right to immediately terminate any contract in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation.
- 2. Termination for Non-Appropriation of Funds for Multi-year or Multiple-year Contracts:** Performance by the City of Beaumont, Texas under the Contract for years subsequent to the current budget year may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"), allocation of funds by the Board of Trustees (the "Board"), and/or, if the Contract is funded fully or partially by Federal grant awards, the

receipt of the Notice of Grant Award ("NOGA"). If the Legislature fails to appropriate or allot the necessary funds, the Board fails to allocate the necessary funds, and/or there is a change in the NOGA, then the District may terminate this Contract without further duty or obligation under the Contract.

3. **Termination for Convenience:** The City of Beaumont, Texas also reserves the right to terminate the contract immediately upon written notice to Vendor for convenience, with or without cause, if the City of Beaumont, Texas believes in its sole discretion that it is in the best interest of the City of Beaumont, Texas to do so.

If the contract is terminated in accordance with any of the terms referenced in Section (B) above, the City of Beaumont, Texas shall compensate Vendor for any work performed and accepted and goods delivered and accepted by the City of Beaumont, Texas as of the termination date. Any award under this procurement process is not exclusive and the City of Beaumont, Texas reserves the right to purchase goods and/or services from other vendors when it is in the City of Beaumont Texas' best interest.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(C) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (C) above, when federal funds are expended by the City of Beaumont, Texas, Vendor certifies that during the term of an award for all contracts by the City of Beaumont, Texas resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (C) above.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(D) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—** Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (D) above, when federal funds are expended by the City of Beaumont, Texas, Vendor certifies that during the term of an award for all contracts by the City of Beaumont, Texas resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (D) above.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(E) Debarment and Suspension (Executive Orders 12549 and 12689)—**A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp.,

p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (E) above, when federal funds are expended by the City of Beaumont, Texas, Vendor certifies that during the term of an award for all contracts by the City of Beaumont, Texas resulting from this procurement process, Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(F) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (F) above, when federal funds are expended by the City of Beaumont, Texas, Vendor certifies that during the term and after the awarded term of an award for all contracts by the City of Beaumont, Texas resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**(G) Procurement of Recovered Materials** — Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement

program for procurement of recovered materials identified in the EPA guidelines.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

#### **H. RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS**

When federal funds are expended by the City of Beaumont, Texas for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR

§ 200.333 for a period of three years after grantees or sub-grantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

#### **I. CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

When the City of Beaumont, Texas expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

#### **J. CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT**

It is the policy of the City of Beaumont, Texas not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

#### **K. CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

The City of Beaumont, Texas has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**L. CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336**

Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

**M. CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS**

Vendor agrees that all contracts it awards to any subcontractors pursuant to the Contract with the City of Beaumont, Texas shall be bound by the foregoing terms and conditions.

\_\_\_\_\_  
Initials of Authorized Representative of Vendor

BY SIGNING BELOW, THE VENDOR AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT VENDOR CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE.

Vendor's Business Name:

\_\_\_\_\_

Address, City, State, and Zip Code (Principal place of business):

\_\_\_\_\_

Printed Name of Authorized Representative:

\_\_\_\_\_

Title of Authorized Representative:

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Signature of Authorized Representative:

\_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT B**

### **CERTIFICATION REGARDING DEBARMENT**

**(RETURN WITH YOUR PROPOSAL.)**

The prospective Contractor certifies, by submission of this bid or proposal, that neither it nor its "principals" as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency.

---

Date

---

Signature of Contractor's Authorized Official

---

Printed Name of Contractor's Authorized Official

---

Title of Contractor's Authorized Official



**ATTACHMENT C**

**CERTIFICATION OF COMPLINACE WITH FTA'S  
BUS TESTING REQUIREMENTS**

**(RETURN WITH YOUR PROPOSAL.)**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 C.F.R. Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 C.F.R. Part 29.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**ATTACHMENT D**

**BUS TESTING PROGRAM CERTIFICATION  
(RETURN WITH YOUR PROPOSAL.)**

\_\_\_\_\_  
**(Insert company name here.)**

hereby certifies that the model of bus being offered in this bid has met the requirements imposed by 49 C.F.R. Part 665, Bus Testing, including the following two (2) conditions:

- 1) A model of the bus has been tested at the bus testing facility in Altoona, Pennsylvania; and
- 2) The bid includes a copy of the Test Report prepared on the bus modeling offered.

Date: \_\_\_\_\_

Authorized Signee: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

**ATTACHMENT E**

**TRANSIT VEHICLE MANUFACTURER CERTIFICATION  
(Bus or Rail Car Purchases Only)**

**(RETURN WITH YOUR PROPOSAL.)**

**CERTIFICATION OF  
DISADVANTAGED BUSINESS ENTERPRISES (DBE) COMPLIANCE**

The responder, a Primary Transit Vehicle Manufacturer, hereby certifies that it has complied with the requirements of 49 C.F.R. Section 26.49, as amended, by submitting an annual DBE goal, as amended, to the Federal Transit Administration (FTA). The goal has either been approved or not disapproved by the FTA.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

**ATTACHMENT F**  
**NON-COLLUSION FORM**  
**(RETURN WITH YOUR PROPOSAL.)**

By submission of this proposal, the Offeror \_\_\_\_\_  
certifies that (s)he is \_\_\_\_\_ of \_\_\_\_\_  
under penalty of perjury, affirms:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor;  
and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not submit a proposal for the purpose of restricting competition.
4. The proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation.
5. Each person signing the proposal certifies that:
  - a. He is the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal and that he has not participated and will not participate in any action contrary to (1-4) above; or
  - b. He is not the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to (1-4) above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to (1-4) above.

**ATTACHMENT G**  
**CONTRACTOR GENERAL CERTIFICATIONS**  
**(RETURN WITH YOUR PROPOSAL.)**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) The Proposer and its Subcontractors are not in arrears to the City of Beaumont, Texas upon debt or contract and are not a defaulter, as surety or otherwise, upon any obligation to the City.
- (2) No officer or employee or person whose salary or compensation for services is or has been payable in the past two (2) years in whole or in part from the City of Beaumont, Texas is or shall be or become interested directly or indirectly in this proposal or in the award or performance of the contract for the supplying of the aforesaid, and other related items, or in any portion of the profits or price therefore.
- (3) The Proposer complies with mandatory standards and polices relating to energy efficiency in compliance with the Federal Energy Policy and Conservation Act (42 U.S.C. § 6321 *et seq.*).

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Date: \_\_\_\_\_

Signature of Contractor's Authorized Official: \_\_\_\_\_

Printed Name of Contractor's Authorized Official: \_\_\_\_\_

Title of Contractor's Authorized Official: \_\_\_\_\_

**ATTACHMENT H**  
**REQUEST FOR EQUALS**  
**(RETURN WITH YOUR PROPOSAL.)**

**Company Name:** \_\_\_\_\_

**Specification Section Number:** \_\_\_\_\_

**Component Item Listed:** \_\_\_\_\_

**Proposed Item:** \_\_\_\_\_

**Note:**

A separate form must be submitted for each request for an approved equal. Proposers are required to submit technical information for each item. Any request received without the necessary technical information will be returned.